

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 * * *

4 GRANT SAXENA,

5 Plaintiff,

6 v.

7 JEZRAEL MARTINEZ-HERNANDEZ, *et al.*,

8 Defendants.
9

Case No. 2:22-cv-02126-CDS-BNW

ORDER

10 Before the Court are Defendants' motions to (1) strike the discovery plan and scheduling
11 order at ECF No. 52 and (2) for sanctions under Fed. R. Civ. P 37(f). ECF No. 55. Plaintiff
12 opposed. ECF No. 56. No reply is necessary.

13 **I. Procedural history**

14 Grant Saxena ("Plaintiff") alleges that, on December 22, 2020, officers of the Nye County
15 Sheriff's Office negligently investigated a criminal case involving a third party who was
16 trespassing, dumping garbage, stalking, and/or harassing Plaintiff at his real property. ECF No. 1-
17 1. Specifically, Plaintiff alleges Defendants failed to file a timely and accurate report on the
18 incident; they did not arrest, cite, or charge the third party with a crime or issue a "mandatory
19 criminal protection order" against him; and they did not explain Plaintiff's rights to him as a
20 victim or witness or otherwise help him "understand how the criminal justice system works." *Id.*
21 As a result, on December 22, 2022, he filed a complaint asserting state-based claims for
22 deprivation of "victim's rights" pursuant to NRS 178 and/or the Nevada Constitution, negligence,
23 and/or intentional infliction of emotional distress.

24 On August 14, 2023, the Court granted Plaintiff's request to extend the time to file a joint
25 discovery plan and scheduling order to September 14, 2023. ECF No. 30. In addition, on that
26 same day, the Court ordered Plaintiff to "communicate with defense counsel within one week of
27 this Order and provide a phone number and email address at which he can be reached." *Id.* The
28 need for the latter part of that order was due to Defendants' representations that they had been

1 attempting to communicate with Plaintiff regarding the need for a Rule 26(f) conference but (1)
2 the phone number which appeared on the docket was not Plaintiff's, (2) Plaintiff objected to the
3 use of the email that appeared on the docket stating it was "an old law school email address in the
4 UK which cannot accept the data" and (3) when Defendants attempted to communicate with
5 Plaintiff at a different email address regarding the scheduling of the Rule 26(f) conference
6 Plaintiff responded with threats against defense counsel and stated he would block further
7 correspondence from defense counsel. ECF No. 29.

8 On September 14, 2023, no joint discovery plan and scheduling order had been filed. As a
9 result, the Court issued an order directing the parties to file one by October 2, 2023.

10 On October 2, 2023, an ostensible joint proposed discovery plan and scheduling order was
11 filed. ECF No. 37. The filing included an attestation that the parties had conducted a Rule 26(f)
12 conference and discussed matters pertaining to the case. *Id.* The filing also included a purported
13 e-signature from counsel for the defense. *Id.* On October 4, the Court granted the joint proposed
14 discovery plan and scheduling order. ECF No. 40.

15 Two days later, Defendants filed an emergency motion seeking to strike that "joint
16 stipulated discovery plan and scheduling order" stating Plaintiff lied to the Court by stating the
17 parties had conducted a Rule 26(f) conference (or discussed matters pertaining to the case) and
18 that Plaintiff forged an e-signature for defense counsel in that filing at ECF No. 37. Plaintiff
19 failed to file a timely response.

20 After considering the exhibits attached to the motion, and the declaration of Michael
21 Edwards, the Court entered findings that (1) that Plaintiff falsely asserted a Rule 26(f) conference
22 had been conducted, and (2) that Mr. Edwards had not authorized placement of his signature on
23 the filing in question. ECF No. 44. As a result, the Court granted the motion to strike ECF No. 37
24 (the ostensible joint stipulated discovery plan and scheduling order). *Id.*

25 In addition, the Court ordered Plaintiff to show cause why the Court should not
26 recommend sanctions, up to and including the dismissal of his complaint, for his fraudulent
27 representations to the Court (under the Court's inherent authority) and pay reasonable expenses,
28 including attorney's fees, (under Rule 37(f)) for his failure to participate in good faith in

1 developing and submitting a discovery plan. *Id.* On November 15, 2023, the Court issued a
2 follow-up order stating that Plaintiff had failed to respond to the Order to Show Cause and gave
3 him until November 22, 2023, to do so. ECF No. 45.

4 Ultimately, on November 19, 2023, Plaintiff asked for a stay of the Order to Show Cause
5 at ECF No. 44 stating he had filed an appeal. ECF No. 46. An email was attached as an exhibit.
6 ECF No. 46-1.¹

7 In turn, the Court (graciously) construed the request for a stay as a response to the order to
8 show cause and on December 12, 2023, issued an order and imposed no sanctions. ECF No. 50.
9 Nevertheless, the Court admonished Plaintiff that, in the future, “he must fully comply with
10 Federal Rule of Civil Procedure 26, and the other rules governing discovery, particularly LR IA
11 1-3 (f) governing the requirement to meet-and-confer.” *Id.* The Court also made clear it would
12 “sanction Plaintiff for future failures to meet-and-confer or otherwise fail to abide by the Local
13 Rules of the Court and the Federal Rules of Civil Procedure.” *Id.* Lastly, the Court ordered the
14 parties to “meet and confer within 7 days of this order and jointly submit to the Court a Proposed
15 Discovery Plan and Scheduling Order that complies with LR 26-1 within fourteen (14) days of
16 the entry of this order.” *Id.*

17 On December 27, 2023, Plaintiff filed another proposed joint discovery plan and
18 scheduling order. ECF No. 51.

19 Two days later, Defendants filed another motion to strike the proposed joint discovery
20 plan and scheduling order and also filed a motion to sanction Plaintiff. ECF No. 52, 55.

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26 ¹ As explained in the Court’s Order at ECF No. 50, the email to the Clerk of Court attached to his motion (at ECF
27 No. 46-1) demonstrating he had filed an appeal did not contain an email address for the intended recipient. Instead,
28 the “To” section of the email was directed to “LV Public Docketing” with no accompanying email address. In similar
fashion, the “From” section of the email stated it was from “Grant Saxena25” with no accompanying email address.
Further, the email did not include any attachments. The Clerk of the Court represented it did not receive an email
from Plaintiff contemporaneously with the date and time that Plaintiff alleges it was sent.

1 **II. Motion to strike discovery plan and scheduling order**

2 Defendants represent Plaintiff continues to refuse to conduct a Rule 26(f) conference and
3 that the discovery plan and scheduling order filed at ECF No. 51 was filed without Defendants'
4 knowledge or consent. ECF No. 52-2.

5 In his response, Plaintiff generally states he has made several attempts to confer with
6 Defendants but does not dispute the notion that the discovery plan and scheduling order filed at
7 ECF No. 51 was filed without Defendants' knowledge or consent. ECF No. 55. As a result, the
8 proposed discovery plan and scheduling order filed at ECF No. 51 will be stricken.

9 **III. Motion for sanctions under Rule 37(f)**

10 Rule 37(f) provides,

11 If a party or its attorney fails to participate in good faith in developing and submitting a
12 proposed discovery plan as required by Rule 26(f), the court may, after giving an opportunity to
13 be heard, require that party or attorney to pay to any other party the reasonable expenses,
14 including attorney's fees, caused by the failure.

15 Fed. R. Civ. P. 37(f).²

16 At the outset, the court notes that, to the extent there was a duty to meet and confer prior
17 to filing the instant motion, the procedural history of this case makes clear any effort to meet and
18 confer would have been futile. As a result, the Court dispenses with any such requirement. LR IA
19 1-4.

20 Defendants represent Plaintiff continues to refuse to conduct a Fed. R. Civ. P. 26(f)
21 conference and that Plaintiff has (once again) blatantly lied to the Court about having attempted
22 to do so. Specifically, Defendants assert they emailed Plaintiff on December 14, 2023, to meet
23 and confer and prepare the joint proposed discovery plan and scheduling order. ECF No. 52
24 Defendants further assert that—contrary to Plaintiff's representations—they never received any
25 response or communication to that email.

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27 ² While Defendants seek the dismissal of this action as a sanction under Fed. R. Civ. P. 37(f), no such authority
28 exists under that rule.

1 In contrast, Plaintiff states he has “made several attempts to confer with Defendants’
2 counsel for the DPSO meeting, as evidenced by phone records, and voicemail left at the firm’s
3 Las Vegas and national offices.” ECF No. 55.

4 While Defendants have attached actual proof of an email sent on December 14, 2023,
5 attempting to meet and confer, Plaintiff has attached no proof of any evidence of such attempts
6 (such as the emails he previously represented having sent to Defendants on 12/18/2023,
7 12/19/2023, and 12/26/2023). In addition, Defendants represent they still have no way of calling
8 Plaintiff because he refuses to provide a number at which he can be reached. ECF No. 55. Thus,
9 the record before the Court tilts in favor of a finding that Plaintiff has not made any such
10 attempts, in violation of this Court’s order.

11 As a result, the Court will issue an Order to Show Cause why Plaintiff should not be
12 sanctioned under Rule 37(f) and be ordered to pay the reasonable expenses, including attorney's
13 fees, caused by his failure to participate in good faith in the development of a discovery plan as
14 required by Rule 26(f). The response to the order to show cause is due January 31, 2024.
15 Plaintiff’s proposed “stipulated discovery plan and scheduling order” represents (1) “Defendants
16 intentionally failed to attend the conference, and also did not reply to any repeated
17 correspondence with the plaintiff regarding the DPSO conferral conference or the DSPO filing
18 before the Court ordered deadline” and (2) "Dr. Saxena contacted the law firm on 12/18/2023 via
19 email, 12/19/2023 via email, 12/19/2023 via phone call, and again on 12/26/2023 via email with
20 the proposed DPSO.” ECF No. 51. In the response to the instant motion Plaintiff represents he
21 attempted to call Defendants several times. Thus, the response to the Order to Show Cause must
22 (1) explain the basis for asserting Defendants intentionally failed to attend the conference given it
23 does not appear there was ever a date and time set for such conference, (2) provide proof from his
24 “sent email” box of the emails sent to Defendants on 12/18/23, 12/19/23, and 12/26/23³ and (3)
25 provide proof of the calls⁴ Plaintiff represented he made to Defendants in his filings at ECF No.

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27 ³ The Court wants to see the emails containing the email address to which such emails were sent as well as the date
and time they were sent.

28 ⁴ This can be done by obtaining the information from Plaintiff’s phone provider.

51 and 56. Failure to provide a response meeting the Court’s specifications may result in an order to pay reasonable expenses and attorney fees under Rule 37(f).

IV. Order to show cause why case should not be dismissed

Federal Rule of Civil Procedure 41(b) authorizes a court to dismiss an action or claim “[i]f the plaintiff fails to prosecute or to comply with ... a court order.” Fed. R. Civ. P. 41(b). In addition, Rule 16(f) authorizes a court, upon motion or *sua sponte*, to dismiss all or part of an action “for a party's failure to obey a...pretrial order.” See Fed. R. Civ. P. 16(f); Fed. R. Civ. P. 37(b)(2)(A)(v). Lastly, courts have the power to *sua sponte* impose sanctions under Fed. R. Civ. P. 37(b)(2)(A)(v) for a party’s failure to obey, among other orders, an order under Rule 26(f). *Dreith v. Nu Image, Inc.*, 648 F.3d 779 (9th Cir. 2011).

As stated above, on December 12, 2023, the Court admonished Plaintiff he had to fully comply with Federal Rule of Civil Procedure 26 and the other rules governing discovery, particularly LR IA 1-3 (f) governing the requirement to meet-and-confer. ECF No. 50. The Court also made clear it would “sanction Plaintiff for future failures to meet-and-confer or otherwise fail to abide by the Local Rules of the Court and the Federal Rules of Civil Procedure.” *Id.* Lastly, the Court ordered the parties to “meet and confer within 7 days of this order and jointly submit to the Court a Proposed Discovery Plan and Scheduling Order that complies with LR 26-1 within fourteen (14) days of the entry of this order. *Id.*

Plaintiff has not complied with the Court’s December 12, 2023, order to comply with Rule 26 as he has not participated in a Rule 26(f) conference. The evidence before the Court makes clear Defendants have attempted to have a Rule 26(f) conference with Plaintiff, but to no avail. *See* ECF Nos. 29, 39 and 39-1 through 39-6. There is no evidence before the Court, beyond Plaintiff generally stating he has called Defendants several times, that Plaintiff has attempted to comply with Rule 26(f).

Plaintiff has not complied with the Court’s December 12, 2023, Order to meet and confer within 7 days of December 12, 2023. The docket makes clear Defendants have attempted to meet and confer with Plaintiff, but to no avail. *See* ECF Nos. 29, 39 and 39-1 through 39-6. There is no

1 evidence before the Court, beyond Plaintiff generally stating he has called Defendants several
2 times, that Plaintiff has attempted to meet and confer with Defendants.

3 Lastly, Plaintiff did not comply with this Court's August 14, 2023, order to provide a
4 *phone number at which he can be reached*. Defendants represent (and Plaintiff does not contest)
5 they called Plaintiff at the phone number he provided (303- 941-8771) and left a voicemail. ECF
6 No. 39-6. Defendants further represent that, less than 2 minutes later, a man called from another
7 number (303-763-8792) demanding to know why they wished to speak to Plaintiff. *Id.* Further,
8 Defendants represent the caller ID revealed the caller as "Jay Saxena," but the man denied being
9 or knowing Jay Saxena and instead stated he was a "1099 person," working as a "phone assistant"
10 who rents out his services to monitor various phone lines on behalf of third parties and eventually
11 hung up the phone. *Id.*

12 The Court notes this case was filed in December 2022. It is now January 2024, and a Rule
13 26(f) conference has yet to take place despite Defendants best efforts to do so, which includes
14 multiple attempts to contact Plaintiff at different phone numbers and email addresses.⁵

15 Plaintiff is to show cause by January 31, 2024, why this case should not be dismissed
16 under Rule 16(f), 37(b)(2)(A)(v), and or 41(b) for his failure to obey the orders listed above. Any
17 such response to the order to show cause must include (a) proof of the calls⁶ Plaintiff represented
18 he made to Defendants (as represented to the Court in his response at ECF No. 55), (b) proof
19 from his "sent email" box of the emails he sent to Defendants on 12/18/23, 12/19/23, and
20 12/26/23⁷ (as represented to the Court in his proposed discovery plan and scheduling order at
21 ECF No. 51) in response to Defendants' December 14, 2023 email, (c) an explanation as to
22 whether phone number 303-763-8792 is his and, if not, what his phone number is, and (4) any
23 information he may have about who called Defendants from phone number 303-763-8792.

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26 ⁵ ECF Nos. 39-6, and 55-2.

27 ⁶ This can be done by obtaining the information from Plaintiff's phone provider.

28 ⁷ The Court wants to see the emails containing the email address to which such emails were sent as well as the date and time they were sent.

IT IS THEREFORE ORDERED that Defendants' motion to strike at ECF No. 52 is **GRANTED**. The Clerk of Court is directed to strike the document at ECF No. 51.

IT IS FURTHER ORDERED that Plaintiff must show cause by January 31, 2024, consistent with the body of this order, why he should not pay the reasonable expenses, including attorney's fees, caused by his failure to participate in good faith in the development of a discovery plan as required by Rule 26(f).

DATED: January 19, 2024.

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